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REFEREED ARTICLE

A Multicultural Act for Australia

Ly Ly Lim

University of Technology Sydney, Australia

Corresponding author: Ly Ly Lim, Faculty of Arts and Social Sciences, University of Technology Sydney, 15 Broadway, Ultimo, NSW 2007, Australia. Ly.Lim@student.uts.edu.au

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Abstract

Multiculturalism as a public policy framework depends on states identifying cultural differences among their citizens as salient for resource allocation, political participation and human rights. The adoption of multiculturalism as a term and a framework signifies the recognition of a politics of difference within a liberal democratic framework of identities and aspirations. Yet the national government in Australia unlike any other country with espoused policies of multiculturalism has chosen to have neither human rights nor multicultural legislation. This paper argues that multicultural societies require either or both sets of legislation to ensure both symbolic affirmation and practical implementation. Taking inspirations from international, Australian State and Territory based multicultural and diversity legislations, and modelling on the Australian Workplace Gender Equality Act of 2012, this paper explores what should be included in a national multicultural legislation and how it could pragmatically operationalise in Australia to express multiculturalism's emancipatory agenda.

Keywords

Multiculturalism; Law as Social Change; Cultural Diversity; Legislation; Australia; Informational Regulation; Diversity

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Introduction

The Australian federal government first adopted multicultural policies in the mid-1970s, but these policies have always lacked the legitimacy conferred by legislation. Since the mid-1990s, Australian federal multicultural policies have reflected the political orientation of the incumbent government. The trajectory has been mostly neoliberal. In this sense multiculturalism has to be restructured and revived in Australia in order to express its emancipatory agendas (Kinowska & Lim 2017). This cannot be effectively done through measures such as anti-racial discrimination legislation. Research has shown the Racial Discrimination Act 1975 is largely ineffective against institutionalised prejudices (Gaze 2015). These prejudices continue to contribute to, and maintain, racial minorities' disadvantage while remaining out of the reach of racial discrimination laws. They manifest in employment opportunities (Booth et al. 2012), subjecting victims to racism socially and in other public spheres (Australian Human Rights Commission 2015), and are reflected in the lack of representation of racialised minorities in both State and Federal governments.

To challenge these norms and structures of inequality and disadvantage, it is necessary to go beyond the retrospective, reactive and individualistic complaint-based system that racial discrimination laws operate in. What is required is a proactive model of legislation that changes broad-based social practices and attitudes to prevent discrimination and disadvantage from occurring. The effect is to establish new norms. This is because legislation aiming for social change can operate at both instrumental and symbolic levels, thereby changing actual practices or social understandings.

The role of law in our society is to provide a unifying force and act as a reference to mediate relations among people. Law also reflects societal values. The dynamism and organic nature of Australian society in the twenty-first century needs a legislative foundation to unite Australians. From this, all Australians can identify a sense of belonging, for legislation is key to providing legal norms which infuse and shape social and systemic relationships and practices. The right to dignity, if it is to flourish in our society, must be normatively embedded in the nature and quality of the everyday relationships that constitute our lives and enable all groups to participate equitably (Hyman, Meinhard & Shields 2011).

Australia's Racial Discrimination Legislation and Racism

Australia's federal Racial Discrimination Act (RDA) was enacted in 1975, giving effect to Australia's commitment under the United Nations (UN) Convention on the Elimination of all forms of Racial Discrimination (CERD). Many have hailed the legislation as the foundation of Australian multiculturalism (Soutphommasane 2015; Calma 2007; Ozdowski 2014; Parliament of Australia 2013). It is likely that most Australians know that direct, overt racial discrimination is unlawful. However, few would be cognisant of the unconscious bias that manifests as racism in Australian society. Whether conscious or unconscious, racism provides 'built-in headwinds' (Irving 2014) that work to discriminate against racial minorities in Australia, whether in employment (Booth et al. 2012) or other spheres (Dunn et al. 2004;

Farrel 2016). This unrecognised but insidious racism permeates societal belief through the media (Jakubowicz & Goodall 1994) and day-to-day interactions (Dunn et al. 2004).

Further, institutional racism is built into the social, economic, political and cultural relations between minority and majority groups in Australia. This often results in the unintended consequences of policies and practices which negatively affect the members of minority groups. This is reflected in the Australian Government's failed 'Operation Fortitude' of 2015 when the then federal Department of Border Protection attempted to 'randomly' visa check people on the streets of Melbourne city, drawing significant protests and backlash (Weber 2015; Keany & Norman 2015).

External high-level international scrutiny of Australia's implementation of its obligations under the CERD also found significant inadequacies. In its latest report in 2010, the UN Committee on the CERD found that Australia needed to take urgent measures to address racism and racial discrimination, disadvantage and inequality. Over 20 recommendations for concrete actions to address these issues were made. They included, in relation to Australia's legal framework, Indigenous peoples, refugees and asylum seekers, and multiculturalism and racial harmony; the report also expressed regret that many recommendations from previous reports had not been fully implemented in Australia (UNCERD Report 2010).

A number of reasons have been postulated as contributing to the RDA's inability to address the broader effects of racism on Australian society. The most significant is in the RDA's operation, which reproduces whiteness as the unacknowledged socially and institutionally embedded norm that defines the human condition. As Nielsen (2008) notes, the RDA is 'designed for and skewed' in favour of 'the white majority' in Australia in terms of its 'neutrality' (Nielsen 2008, p.1). Its operation focuses on the individualistic, discrete experiences of discrimination based on race or ethnicity. There is no acknowledgement of the disparities that exist in the social, political and economic experiences of difference. Nor does the operation of the RDA take into account the variation in the social, political and economic impact of race discrimination (Gaze 2015). Thus, the RDA addresses the atomistic individual symptoms, not the causes of social phenomena. Judicial interpretations of racial discrimination cases corroborate this view (Allen 2010).

Australian courts have been reluctant, and have even ignored, the capacity of formal equality to stabilise, endorse and reproduce dominant white privilege. Instead, Australian courts have applied a 'race neutral' and 'colour-blind' or 'sameness' principle to racial discrimination cases before them (Gaze 2015; Allen 2010). This defeats the underlying philosophical underpinning of non-discrimination and advancement of minority rights that the CERD espouses and on which the RDA is based. This is perhaps reflective of the composition of the Australian judiciary, drawn from those successful in the legal profession in which minority groups are noticeably under-represented (Gaze 2015). Without imputing bad faith, it is not difficult to 'connect the dots': comprising overwhelmingly of able bodied white Anglo-Celtic males, the Australian judiciary is simply unlikely to understand (or perhaps, recognise) the experience of racial discrimination.

On a broader perspective, the RDA has no impact on how racialised minorities in Australia are represented in texts, the mainstream media and sports, which are owned and usually written, by the majoritarian white people. The 'tone' and content of Australia's mainstream media implicitly promote the discursive manifestation of whiteness as the 'norm'. This is perhaps reflective of the time when the RDA was enacted, in 1975. The focus then was on the rights of migrants (Europeans) who arrived to Australia since WWII and little attention was paid to the rights of Indigenous Australians or racialised minorities already in Australia.

Thus it can be seen the operation of the RDA ignores the importance of race in configurations of national identity, belonging and ownership – fundamental enablers of successful multiculturalism in Australia. Given this, its use as a tool to support diversity and enhance multiculturalism in Australia is limited.

The reality of modern Australian society is that one could be a member of many micro-communities: workplace, neighbourhood, religious, cultural, educational or gender-based; all of which cut across one another infected with all the socio-cultural variables each individual brings with her or his membership (Thornton 1990, p. 257). All of these senses of community require some ethical code; some sense of commitment to others. While there is a limit to which legislations can operate as vehicles for social change (Thornton 1990, p. 260), laws can reflect the values that inform what we do, how we do it and the goals we want to achieve as a society. Therefore, it is as important to embed the diversity of Australian society: sociologically, ideologically, politically and legally, because legislation is about power. If values affect the exercise of power, it is very important that the diversity of values and the experience of backgrounds should be reflected (Kirby 2015, 8:32), for legislation does serve important symbolic and educative functions.

To realise multiculturalism's emancipatory agenda, the continuing exclusion of racialised minorities in the discourse over national belonging must be addressed. This should involve not just sustaining the largely ineffective legal provisions protecting racialised minorities from direct discrimination (Jupp & Clyne 2011) through anti-racial discrimination laws such as the RDA. Multicultural policies need to incorporate certain values and attitudes that belong to every Australian, embedded in legislation. Australian multiculturalism should be about equal opportunity, valued participation, valued recognition and belonging.

This goes beyond the idea of integrating new immigrants into the 'host' society. It implies that while newcomers are being integrated, the rest of Australian society is also changing to reflect the diversity of the whole, redefining what it means to be 'Australian'. It transcends principles of tolerance and honours non-discrimination. Ultimately, it involves a sense of belonging, of being a part of a larger whole (Raz 1994), recognising that individuals, communities and cultures are never hermetic (Donald 2007) and is not the sole determinant of identity but one subset of myriad contributing factors together with class, gender, religion, sexuality, age, education not to mention individual experience.

Rethinking and Reinvigorating Multiculturalism

Australian multiculturalism was devised at a time when immigrants to Australia were primarily European, Christian and White. They shared many traditions and commonalities with the existing Anglo-Celtic Australian population. Australian society in the twenty-first century is much more diverse in its ethnic, religious and regional composition (Australian Bureau of Statistics 2018). It has changed dramatically including the development of 'diversification of diversity' or 'superdiversity' (Vertovec 2007) brought about by later generations of Australians with mixed cultures (Australian Bureau of Statistics 2018). The impetus in making a multicultural reality is needed now more than ever (Jakubowicz 2015). Both governments and civil society have critical roles to play in this process (Bouma 2015). This success can be created through a political framework within which all Australians can express their culture, non-discrimination honoured, cultural diversity valued as a public and common good, and embraced. Through such a vision, political leadership and supporting actionable policies, social cohesion, unity and solidarity can be engendered.

Such a vision can be realised with a legislative lever from which to shift prejudice, a federal Multicultural Act (MA), as the foundation to establish inclusivity of all Australians from all backgrounds. That element should now be provided. An Act of the Australian Parliament to 'reset' the playing field and provide the legal framework and permanent benchmark against which federal multicultural policies could be measured (Southpommassane 2012). Unlike the RDA which is a retrospective and reactive piece of legislation, a MA would serve as a pro-active form of legislation that promotes inclusiveness as opposed to any reverse discrimination. It would be an educative form of legislation, as opposed to quotas. For a MA would reflect community standards and aspirations. When complemented with enforcement, public policy and practice, political and community leadership, public education and awareness campaigns, education and training of professionals and the bureaucracy, and community education and development, over time, this will have a potent effect in changing community attitudes and behaviour (Rice 2014).

The MA would not be aimed specifically at addressing past disadvantage but to minimise factors contributing to continuing disadvantage and to remove barriers to inclusion by negating difference as obstacles to equal opportunity. From this perspective, the MA is enabling legislation that provides an effective means for allowing minorities to have a greater role and voice in today's society to eliminate requirements unrelated to ability to participate in society.

Such an Act would also allow the government to wrest back the narrative of inclusion from detractors; to define, direct and drive the government's policy of multiculturalism (Jakubowicz & Ho 2013). This would give credence to these policy objectives, a symbolic acknowledgement that Australia is not only demographically diverse but an opportunity to articulate public policy implementation of that diversity (Jakubowicz 2015), being the obligations and rights, and respect for the equal rights and dignity of all Australians. In the words of former Australian Prime Minister, Malcolm Fraser:

In multiculturalism, Australians can find a basis which offers at once both an understanding of the present and vision of the future built upon that understanding. (Fraser & Simmons 2010, p. 427)

Importantly, legislation can help ensure the politics of belonging in Australia is no longer infected with racialised or religious undertones. The impact of such a legal foundation in assisting the integration of immigrants and minorities in Australia should never be underestimated. It removes barriers to their participation in Australian life and can make them feel more welcome in Australian society, leading to a stronger sense of belonging and pride (Kymlicka 2010) in Australia. It could be that the Act lays the foundation for all Australians, in the words of Paul Keating, a nation ‘*sure of who we are and what we stand for*’ (cited in Kelly 2009, p. 157), reflecting that multiculturalism is a condition for realising a national destiny.

The ‘power’ of legislation

Bringing social change through legislation has, and continues to be, an issue of contention for the community, policy makers, researchers, politicians and legislators alike. The debate as to whether law plays any role in changing society has been controversial (Vago 2015). Detractors argue the law’s ability to bring about social change is limited. The government is constrained by existing laws and institutional structures, such as the founding charter, the Australian Constitution, but also the preoccupation with procedure rather than substance by a legal institution that focuses on rational technicality rather than equity. All these factors can make social change slow and ineffective. Further, the government is also constrained by the effectiveness of its bureaucracy. Thus, among the ways to bring about social change, for some legislation is a blunt tool at best. Notwithstanding that, as Dr Martin Luther King Jr noted:

Laws in this area will not change the hearts of men [sic], but they can restrain the actions of the heartless (King 1963).

Law is about power (Kirby 2015, 8:25). In many areas of Australian life such as education, community relations, housing, transportation, energy utilisation, protection of the environment, and crime prevention, the law is an important instrument with the power to bring about change. Governments can write laws aimed at social change, and legislation can support change. This is because law is deeply implicated in our economic, political, and social worlds, pursuit of social change invariably involves an engagement with law.

In liberal democracies such as Australia, law is a vehicle through which a programmed social evolution can be brought about. Law can play an important direct role in social change by shaping various social institutions such as the requirements to have disability parking close to entrance to public buildings. The public policy advantages of law as an instrument of social change are attributed to the fact that law is seen as legitimate, more or less rational, authoritative, institutionalised, generally not disruptive, and backed by mechanisms of enforcement (Evan 1965; Vago 2015; Barkan 2015).

The power of law is not just as an instrument of social change but to drive social change. Law has been shown to transform people's behaviour and consolidate cultural change, for law does not "*only codify existing customs, morals, or mores, but also... modify the behaviour and values presently existing in a particular society*" (Evan 1965, p. 286). Law reflects societal values, informs choice and behaviour and affects the exercise of power. Take the example of the legislative public policy of smoking. The Australian government's own commissioned research (Chipty 2016) has shown that the Australian government's legislative intervention against smoking through the tobacco plain-packaging laws, the *Tobacco Plain Packaging Act 2011 (Cth)* and the *Tobacco Plain Packaging Regulations 2011*, has been highly effective in reducing smoking rates (Chipty 2016). These findings were also supported by the World Health Organisation research (WHO 2015).

Prima facie, the link between the public policy of smoking and multiculturalism appear tenuous. Nevertheless, a closer inspection will reveal significant similarities: both are public policy measures aim at engendering behavioural and social changes for public good, benefitting individuals and society. The changes are aimed at the cultural, social and economic levels. While the public policy on tobacco smoking has enjoyed national legislative support, Australian multiculturalism and multicultural policies have not.

The Hawke Government (1983-1992) made a tentative attempt to canvass the possibility of federal multicultural legislation in 1989 but the proposal was postponed for a perceived fear of community backlash against multiculturalism (FitzGerald Immigration Policy Review 1988; Birrell & Betts 1988; Gardiner-Garden 1993). Subsequent Australian governments have demonstrated timidity in approaching the matter. A 2017 Senate Inquiry into Australian multiculturalism strongly recommended Australia enact a federal multicultural legislation (Australia. Parliament 2017). But the current Australian Senate crossbench appears to have become a permanent home to minority and protest causes. Thus, the prospect of legislative intervention to support multiculturalism in Australia is unlikely.

However, historical developments demonstrate legislative intervention is mandatory to ensure lasting social change, evidenced by the recent 2017 same-sex marriage legislative change. Evan (1965, pp. 288-291) identifies a number of conditions under which law could induce social change and promote lasting change at a deeper level. These include: (i) the law must emanate from an authoritative and prestigious source, of which the Parliament of Australia is such a source; (ii) the law must introduce its rationale in terms that are understandable and compatible with existing values; (iii) advocates of the change should make reference to other communities or countries with which the population identifies and where the law is already in effect; (iv) enforcement of the law must be aimed at making the change in a relatively short time; (v) those enforcing the law must themselves be very much committed to the change intended by the law; (vi) the instrumentation of the law should include positive as well as negative sanctions; and (vii) the enforcement of the law should be reasonable, not only in the sanctions used but also in the protection of the rights of those who stand to lose by violation.

The ideal platform to embed multiculturalism's philosophical foundations in Australian society is through constitutional endorsement. However, changing the Australian Constitution attracts the arduous referendum process. History shows the prospect of success is extremely low. Since Federation in 1901, there have been eight successful referendums out of the 44 attempted. Furthermore, the incumbent federal government has shown no indication that it has any interest in pursuing multicultural legislation, which is within its power, let alone a referendum on multiculturalism.

Nonetheless, legislative intervention is relatively 'easier' to achieve compared to constitutional change. The key requirement is for an incumbent Australian government to have the requisite ambition to drive the change. The philosophical foundations outlined by Evan (1965) above provide useful guidance for the framework, format, content and operation of the proposed MA within this article. Canada's *Canadian Multiculturalism Act 1988* and Australian State multicultural legislations also provide useful examples.

Authority – Source of Power

Australia's legislative structure requires that all legislations have a source of authority. Inevitably, this would directly or indirectly, be derived from the Australian Constitution. Section 51(xxiv) of the Australian Constitution enables the federal parliament to enact laws which are a faithful implementation of some international treaty or convention to which Australia is a party (Blackshield & Williams 2014; Australia. Parliament 1995). Australia's implementation towards full ratification of its international obligations (the *International Convention on the Elimination of All Forms of Racial*; the *International Covenant on Economic, Social and Cultural Rights*; and the *International Covenant on Civil and Political Rights*) provides the authority to enact a MA at the federal level.

Arguably, the 'races power' (Australian Constitution, Section 51 (xxvi)) provision of the Australian Constitution could also provide an alternative source of power to support a MA, if the term 'any race' is replaced by '*all races*', to allow the MA to be given effect for 'the people of *all races*' in Australia, for it would be 'deemed necessary to make *such* a special law *for the advantage of all*'. The inclusion of the words 'for the advantage of all' is aimed at limiting previous constitutional interpretations where Australian courts have ruled there are no limits to the races power provision, such as in the Hindmarsh Island Bridge case (Williams 2007) and the Wik case (Clarke 1997). The consequence from these cases is that Australian governments could legislate to the advantage or detriment of the (Indigenous) communities affected.

The ultimate aim of the MA is to cultivate a living, breathing culture of inclusiveness. Its content and structure must be sufficiently flexible to adapt to future changes in Australian society while reflecting the emancipatory philosophy of multiculturalism: to be effected through learning and recognising diversity; actively valuing and advancing inclusiveness; and to lead and embrace diversity, to be achieved through the tripartite structures of leadership, regulation and education.

The Objectives of the MA would be:

- (1) To recognise and value the lived reality of Australian community as a diverse and multicultural society;
- (2) To outline the principles of multiculturalism that govern governmental relations with the peoples of Australia, mediate cultural relations among Australians and establish the new 'norms' of socio-cultural nation building; and
- (3) To establish a federal Australian Multicultural Commission (AMC) and its role in advancing federal government objectives to achieve a socially inclusive society among the peoples of Australia.

Advocacy & Leadership

On social issues such as inclusiveness, symbolism and leadership remain vital to its success. This leadership can be reflected with the Prime Minister having the responsibility for the portfolio of multiculturalism, to be further bolstered by the Prime Minister making an annual statement (Curran 2006) on the 'state of the nation' and tabling an annual report by AMC on the nation's socio-cultural health. In addition, the federal government would lead by example, through its activities, processes and policies to reflect the Australian population it serves. The Australian public service (APS), which represents 1.2% of the Australian labour force (Australian Public Service Commission (APSC) 2016) would lead by adopting pragmatic and concrete measures in implementing diversity programs under the MA (APSC 2016). This would reinforce and reinvigorate the current (APSC Act 1999, Section 18) voluntary commitment of APS leadership on diversity through mandatory certification. Other federally funded bodies including the courts, tribunals and educational institutions would additionally be required to do so.

Regulation – 'Hard & Soft'

Compliance with the objectives of the MA would be reflected through the centralised theme of 'informational regulation' (Freiberg 2010). When augmented by the 'naming and shaming' and economic disadvantage through non-compliance of the law, they could be powerful tools to effect change. 'Soft' regulation is best suited to achieve the objectives of a MA where the ultimate aim is to effect socio-cultural change requiring balancing pragmatism and political acceptance.

Implementation and enforcement of the MA's objectives would be via the AMC through a flattened 'pyramid' structure (see figure 1 below) – where enforcement mechanisms escalate as one moves up the pyramid in response to non-compliance (Ayres & Braithwaite 1992).



Figure 1 Regulation under the MA

Thus, the AMC's primary functions would be:

- Acting as an advocate for multicultural diversity
- Developing and facilitating a nation-wide research program to address issues facing Australia, including those relating to multiculturalism, intercultural relations, youth affairs and socio-cultural nation building.
- Contributing to school curriculum on multiculturalism and diversity
- Establishing a multicultural and diversity certification program – setting minimum standards, guidelines and criteria
- Advising and assisting all organisations to achieve diversity certification
- Promoting and fostering inclusiveness through diversity education, tailored training and research, while promoting integration of all Australians from all backgrounds into a multicultural Australian citizenship of reciprocal recognition and obligation
- Providing an annual report, to be tabled in the Australian Parliament, naming organisations' progress of compliance on diversity programs. This list would be maintained and updated on the AMC's website for access by interested parties. Private entities certified would be advantaged tendering for government contracts.

Informational or ‘Soft’ Regulation

The foundation of the pyramid, central to achieving the MA’s goals, would be its ‘informational regulation’ (Howe & Landau 2007) supported by the twin pillars of disclosure and education. Informational regulation is premised on the idea that by requiring agencies to disclose certain information, stakeholders would then exert the necessary pressure to force compliance (Freiberg 2010). Certification is the formal external recognition of compliance.

Disclosure

Information disclosure requirements, of which some are already required by the APSC, provide powerful knowledge from which employees and other stakeholders can gain insight into the operation of an agency. Under the MA, agencies should disclose the following information in annual reports to the AMC:

- Current diversity status of workforce profile, of which the requirement to report on gender is already required under the *Workplace Gender Equality Act 2012* (Cth) (WGE) – classification/rank, employment status and salary compared to the Australian population;
- Existing diversity policies and how employees could access these policies;
- Strategies and measures to foster employee contribution and comment on diversity including anonymously to the AMC, should they choose
- Diversity strategy consultation process, mode of consultation and categories of employees consulted
- Strategies and policies to encourage innovation to embrace diversity
- Monitoring and audit of diversity policies and programs including achievements and innovations; and
- Mechanisms for continuous/scheduled review of diversity strategies, policies and programs

The MA would operate pragmatically by enforcing substantive outcomes through mandatory information disclosure, rather than by prescription such as quotas, making it politically more palatable. By requiring disclosure of information, this enables stakeholders to impose internal pressure, adding to a backup accountability mechanism even for situations where the threat of ‘naming and shaming’ may not inspire compliance. Further, in enabling employees and stakeholders to have a voice, an internal voice, where discontent could be recognised early, rather criticism from afar, this may assist in early resolution of any issues identified.

Private Enterprise

While the logic of attracting the best talents through diversity is self-explanatory and self-serving to private enterprises, it has been demonstrated that diversity policies aimed at eliminating racial discrimination and promoting equality can lead to improved efficiency, productivity and profits by attracting more talented and loyal employees and reducing absenteeism (Paradies et al. 2009). Under the MA, private bodies with 100 or more employers would be required to submit annual reporting (adopted from Part IV of the WGE Act 2012) on diversity to the AMC. In addition, all private enterprises would be actively

‘encouraged’ to comply through policies that stipulate preferential advantage in tendering for government contracts if entities are ‘diversity certified’ by the AMC.

One of the avenues the Australian government could immediately implement actions to achieve the Objectives of the MA is to lead by example by leveraging its annual expenditure in providing government services. With the Australian public service expenditure exceeding \$60 billion in 2015 (Towell 2015) and expected to continue in the future, the federal government is armed with a significant leverage to demonstrate that the MA would be more than benign race conscious measures mandated by legislation – even if those measures are not remedial in the sense of being designed to compensate victims of past governmental or societal discrimination – it would serve important governmental objectives and timetables that focus attention on progress towards non-discriminatory practices.

Annual Report

To compile its annual report to the AMC, agencies would be required to inform employees, shareholders and other stakeholders of the lodgement of the annual report and must provide them with access to the report (adapted from the WGE Act, Section 16). Agencies must inform employees and stakeholders they would have an opportunity to comment on the report and they may give those comments to either the employer or the AMC. If comments are submitted within 30 days after the report has been submitted to the AMC, employers would be able to take those comments into account when providing additional information to the AMC. Likewise, comments sent to the AMC within 30 days would allow the AMC to consider the comments when requesting additional information as part of reviewing the employer’s certification under the Act. This allows actors who are affected, namely employees and other stakeholders, active involvement and therefore would enhance the opportunity to effect cultural change internally, somewhat like a ‘feedback loop’, thus turning these actors into ‘regulators’, providing another layer of support to the AMC as the government’s regulator and rectifying information asymmetry because it means the AMC would not be solely relying on employers to provide information.

Through consultation with employees and for them to have the opportunity to contribute either internally, anonymously, or to provide a contribution separately to the AMC, the MA provides an additional layer of pressure for employers to comply. The use of law to turn employees and other stakeholders into ‘regulators’ by enabling their comments on their employer’s reports may also prevent the employer from presenting its implementation and progress more favourably than the workplace’s reality, such as ‘window-dressing’ compliance. Employees would now be free to reveal the truth including to the AMC if they are uncomfortable raising it internally.

There is potential for employees whose English is not proficient to be disadvantaged. Further, not all employers would be interested in the feedback they receive from employees and other stakeholders. However, both issues could be addressed through allowing employees to anonymously provide comments to AMC as external regulator, who can request further information from an employer regarding their compliance. Furthermore, employees who are not confident in providing comments in English could provide comments in their own

language through confidential translation and interpreting services such as the national Telephone Interpreting Service, to be made available via the AMC. Providing misleading or false information would cause the employer to be non-compliant, allowing the AMC to raise concerns with the Agency Head, the Minister concerned or both, and if the AMC is not satisfied with the response, 'name and shame' the agency in its annual report to Parliament.

Limitations of Disclosure Requirements

The effectiveness of mandatory disclosure requirements would depend on the willingness of employees to engage in the process and make comments on the employer's report. There is a risk that employees would be unwilling to provide criticism on the report for fear of jeopardising their position – this is partially addressed through allowing anonymous comments.

Further, there is an assumption that people would understand and be capable of responding to information. It is unlikely that all employees would have the capacity to understand the reports in the same way as information affects different groups in society differently (Freiberg 2010), and would also be dependent on the complexity of the information and language capability of the actors concerned.

There may also be other factors that would influence an employee's capability to comment – including whether they have the time, or are sceptical of the impact their contribution would make, or other reasons. This is where standardisation through benchmarking criteria for certification is important. Setting the benchmark as the reference standard to disclose information allows the AMC to compare and evaluate the quality of information provided including any discrepancies and to seek further information, where required.

Education

The other pillar to informational regulation involves the AMC providing information on the lived reality of Australian communities, promoting the benefits of diversity in order to generate attitude change, capability development and norm formation or modification (Freiberg 2010). This is particularly important in achieving changes to embrace diversity, which requires challenging the attitudes and norms as well as enabling Australians to build the necessary processes and knowledge. This would involve multifaceted strategies and require such tools as advice, education, training, advertising, information campaigns and legislative summaries.

The AMC would be the repository of expertise on diversity measures and one of its core functions would be to provide advice and assistance to all: employers, employees, members of the public and school curriculum regarding the federal government's diversity measures and the *raison d'être* for these policies. For employers, the AMC has a role to assist them meet the benchmark standard set for certification and providing education to their staff.

Certification

Performance indicators by way of certification by the AMC is the next tier above informational regulation. Certification is an outward manifestation of formal recognition that the agency has reached the minimum standard required. Agencies are re-certified through annual compliance with the annual report. To achieve certification by the AMC, a number of steps must be implemented to demonstrate the substantive achievement in diversity:

- Establish a Multicultural Charter by issuing a diversity action policy statement to all staff
- Appoint a senior manager to oversee the program Satisfy information disclosure requirements
- Review personnel policies and practices to invest in diversity
- Set goals for the diversity program to reflect the lived reality of the Australian community
- Devise strategies to monitor the program and evaluate its achievements.

‘Hard Sanctions’

The AMC would also be empowered to address non-compliance in a tiered approach. At the first instance, it could seek further information, allowing a 30-day response period. If a response is not forthcoming by the set time or is inadequate, the AMC would have the option of allowing further time or writing to the Agency Head outlining areas of non-compliance, copying in the responsible Minister.

If non-compliance persisted, the AMC would have the further option of listing an agency among one of two categories – in progress or non-compliant. While ‘naming and shaming’ may appear weak as a sanction and its effectiveness questioned in other legislation (Thornton 2012), the AMC’s annual report (to be tabled in Parliament by the Prime Minister through an annual statement) would allow potential external scrutiny and pressure to be levied by the public, the media and other interested parties. Its effectiveness would be further bolstered through the Australian parliamentary process where Ministers responsible for non-compliant agencies risk being asked to account for her or his agency’s non-compliance during parliamentary sessions.

Conclusion

Since its adoption in the 1970s, Australian multiculturalism has operated without legislative legitimacy. Government multicultural policies have been tokenistic because they lack the legislative seal of approval needed for changes to be enduring and effective. The Australian Government’s approach to policies on multiculturalism has been mostly a top-down, goal-oriented approach designed to enhance cultural governance (Jupp 2007), or as Fleras argued, ‘theoretical possibility and practice of a multicultural governance without multiculturalism’ (Fleras 2009, p. 115). A federal Multicultural Act would provide a statutory framework for the existing government multicultural policy with a clearer sense of purpose and direction. Such an Act would acknowledge multiculturalism as a fundamental characteristic of Australian society with an integral role in the decision-making process of the government

activities and processes, directed toward the preservation and enhancement of social inclusion in Australia.

State and Territory governments have stepped up to take leadership during moments of federal government timidity and have successfully enacted their own multicultural Acts to charter multicultural policies tailored to their specific community conditions. What is required now is leadership by the federal government to champion a new proactive approach based on inclusion and community-based policies to inculcate an appreciation, and embracing of diversity. When backed by a legislative lever, multiculturalism could revive earlier successes by generating a deep and pervasive nation-wide commitment to its concept and securing a social authority sufficiently deep to transform society into a new historic project. It would provide legitimacy for a rational national response to resurgence of divisive and polarised groups. Its symbolism is to acknowledge the fundamental ideas that while ‘race’ (Ang & Stratton 2001) exists and remnants of its power continues to operate in the national psyche for a portion of the Australian public, a new sense of national unity has emerged to reflect the lived reality of the Australian population (ABS 2018).

No law, of course, is a panacea. But a federal Multicultural Act would be a legislative empowerment of unapologetic insistence on the formal recognition of dignity, respect, equality and freedom as fundamental human liberties for Australians of non-English speaking backgrounds. It would be a pro-active form of legislation offering an enabling framework that could provide the other necessary pillar, in concert with anti-racial discrimination laws, to engender inclusive equality for racialised minorities in Australia, symbolically and in a practical sense, an identity of a place in Australia.

In future, the Act could help cement the insistence that the cultural heritage of any particular Australian does not exclude them from full participation in Australian society. A future in which all Australians, ‘white’ or not, can identify in a nation confident in its diversity and vibrant society with ‘courage, community and compassion’, and be ‘enlarged by those who call her home’ (Shorten 2016, 29:03-29:28); in other words, an Australian identity where diversity holds pride of place with commonly shared values is integral to the Australia of the twenty first century.

References

- Allen, D. 2010, ‘Remedying discrimination: the limits of the law and the need for a systemic approach’, *University of Tasmania Law Review*, vol. 29, no. 2: pp. 83-110.
- Ang, I. & Stratton, J. 2001, *On Not Speaking Chinese: Living between Asia and the West*, Routledge, London, 2001, 28–31. <https://doi.org/10.4324/9780203996492>
- Australia 2012, *Workplace Gender Equality Act 2012 (Cth)*
<https://doi.org/10.14217/9781848599451-6-en>
- Australia 1999, *Australian Public Service Commission Act 1999 (Cth)*
- Australia 1975, *Racial Discrimination Act 1975 (Cth)*

- Australia. Government. Committee to Advise on Australia's Immigration Policies 1988, 'Immigration: A Commitment to Australia - The Report of the Committee to Advise on Australia's Immigration Policies', Australian Government Publishing Service, Canberra [referred to as the FitzGerald Immigration Review 1988].
- Australia. Parliament. Joint Standing Committee 2013, 'Inquiry into Migration and Multiculturalism in Australia Report', viewed 5 July 2018, www.aphref.aph.gov.au/house_committee_mig_multiculturalism_report_fullreport-1.pdf
- Australia. Parliament. Senate Standing Committee on Strengthening Multiculturalism 2017, 'Ways of Strengthening Australian Multiculturalism and Social Inclusion', viewed 30 June 2018, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Strengthening_Multiculturalism/Multiculturalism/Final_Report
- Australia. Parliament. Senate Standing Committees on Legal and Constitutional Affairs 1995, 'Trick or Treaty? Commonwealth Power to Make and Implement Treaties', https://www.aph.gov.au/parliamentary_business/committees/senate/legal_and_constitutional_affairs/completed_inquiries/pre1996/treaty/report/index
- Australian Bureau of Statistics 2018, 'Snapshot of Australia: Stories from the Census 2016', *Australian Bureau of Statistics*, viewed 1 Jul 2018 <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/2071.0~2016~Main%20Features~Snapshot%20of%20Australia,%202016~2>
- Australian Human Rights Commission 2015, *Freedom from Discrimination; Report on the 40th Anniversary of the Racial Discrimination Act*, viewed 15 Feb 2018, https://www.humanrights.gov.au/sites/default/files/document/publication/RDA40_report_2015_AHRC.pdf
- Australian Public Service Commission 2016, *2014–2015 State of the Service Report*, <<http://www.apsc.gov.au/about-the-apsc/parliamentary/state-of-the-service/state-of-the-service-report-2014-15/section-1-aps-at-a-glance>>
- Ayres, I. & Braithwaite, J. 1992, *Responsive Regulation: Transcending the Deregulation Debate*, Oxford University Press, Oxford. <https://doi.org/10.2307/2074486>
- Barkan, S. 2015, *Law and Society: An Introduction*, Routledge, New York.
- Birrell, R. & Betts, K. 1988, 'The FitzGerald Report on immigration policy: Origins and implications', *The Australian Quarterly*, vol. 60, no. 3: pp. 261-274. <https://doi.org/10.2307/20635486>
- Blackshield, T. & Williams, G. 2014, *Australian Constitutional Law & Theory: Commentary and Materials*, 6th ed. Federation Press, Annandale, NSW, pp. 896-908.
- Booth, A., Leigh, A. & Varganova, E. 2012, 'Does racial and ethnic discrimination vary across minority groups? Evidence from a field experiment', *Oxford Bulletin of Economics and Statistics*, vol. 74, no. 4: pp. 547-573. <http://andrewleigh.org/pdf/AuditDiscrimination.pdf> <https://doi.org/10.1111/j.1468-0084.2011.00664.x>
- Bouma, G. 2015, 'The role of demographic and socio-cultural factors in Australia's successful multicultural society: How Australia is not Europe', *Journal of Sociology*, vol. 52, no. 4: pp. 759-771. <https://doi.org/10.1177/1440783315584210>

- Calma, T. 2007, 'Multiculturalism: a position paper by the Acting Race Discrimination Commissioner', *Australian Human Rights and Equal Opportunity Commission*.
<https://www.humanrights.gov.au/our-work/race-discrimination/publications/multiculturalism-position-paper-acting-race-discrimination>
- Canada.1988, *Multiculturalism Act 1988*.
- Chipty, T. 2016, 'Study of the Impact of the Tobacco Plain Packaging Measure on Smoking Prevalence in Australia', Australia. Department of Health, viewed 26 Feb 2018
<http://www.health.gov.au/internet/main/publishing.nsf/Content/study-pp-measure>
- Clarke, J. 1997, 'Debating Wik', *Alternative Law Review*, vol. 22, no. 6: pp. 298-301.
- Curran, J. 2006, *The Power of Speech: Australian Prime Ministers Defining the National Image*, Melbourne University Press, Melbourne.
- Donald, J. 2007 'Internationalisation, diversity and the humanities curriculum: Cosmopolitanism and multiculturalism revisited' *Journal of Philosophy of Education*, vol. 41, no. 3: pp. 289-308. <https://doi.org/10.1111/j.1467-9752.2007.00572.x>
- Dunn, K., Forrest, J., Burnley, I. & McDonald, A. 2004, 'Constructing racism in Australia', *Australian Journal of Social Issues*, vol. 39, no. 4: pp. 409-430.
<https://doi.org/10.1002/j.1839-4655.2004.tb01191.x>
- Evan, W. M. 1965, 'Law as an Instrument of Social Change', in Gouldner, A. and Miller, S. (eds.), *Applied Sociology*, Free Press, New York, 285-93.
- Farrell, P. 2016, 'Alleged Racist of Greens MP Jenny Leong by Police Sparks Inquiry', *The Guardian* (online), viewed 10 Feb 2018 <http://www.theguardian.com/australia-news/2016/apr/10/alleged-racist-abuse-of-greens-mp-jenny-leong-by-police-sparks-inquiry>
- Fleras, A. 2009, *The Politics of Multiculturalism: Multicultural Governance in Comparative Perspective*, Palgrave Macmillan, New York.
- Fraser, M. & Simmons M. 2010, *Malcolm Fraser: The Political Memoirs*, Miegunyah Press, Melbourne.
- Freiberg, A. 2010, *The Tools of Regulation*, The Federation Press, Annandale NSW.
- Freiberg, A. 2010, 'Restocking the Regulatory Tool-kit', *Working Paper No 15, Jerusalem Forum on Regulation & Governance*, June
 2010<http://regulation.huji.ac.il/papers/jp15.pdf>
- Gardener-Garden, J. 1993, 'Background Paper Number 8 1993: The Multiculturalism and Immigration debate 1973-1993', Parliamentary Research Service, Parliament of the Commonwealth of Australia.
- Gaze, B. 2015, 'The RDA after 40 years: advancing equality, or sliding into obsolescence?' in Australian Human Rights Commission 2015 conference paper, *Perspectives on the Racial Discrimination Act: Paper from the 40 Years of the Racial Discrimination Act Conference*, pp. 66-80.
https://www.humanrights.gov.au/sites/default/files/document/publication/Conference%20Papers_Publication%20layout%20Final_0.pdf
- Howe, J. & Landau, I. 2007, 'Light Touch' Labour Regulation by State Governments in Australia', *Melbourne University Law Review*, vol. 31, no. 2: pp. 367-399.
<https://doi.org/10.2139/ssrn.961528>

- Hyman, I., Meinhard, A. & Shields, J. 2011, 'The Role of Multiculturalism Policy in Addressing Social Inclusion Processes in Canada', Centre for Voluntary Sector Studies Working Paper Series, 2011 (3), Ryerson University, Toronto Canada.
https://www.ryerson.ca/cvss/working_papers/
- International Convention on the Elimination of All Forms of Racial (ICERD)*
https://doi.org/10.1163/9789004279926_019
- International Covenant on Economic, Social and Cultural Rights (ICESCR)*
<https://doi.org/10.1515/9783110432251-086>
- International Covenant on Civil and Political Rights (ICCPR)*
<https://doi.org/10.1093/acprof:oso/9780199285402.003.0003>
- Irving, D. 2014, *Waking Up White: And Finding Myself in the Story of Race*, Elephant Room Press, Cambridge, MA. <https://doi.org/10.4172/2572-0791.1000112>
- Jakubowicz, A. 2015 'How national multicultural legislation would strengthen Australian society', *The Conversation*, 5 November, viewed 5 Mar 2018
<http://theconversation.com/how-national-multicultural-legislation-would-strengthen-australian-society-50061>
- Jakubowicz, A. & Goodall, H. (eds.) 1994, *Racism, ethnicity and the media*, Allen & Unwin, Sydney.
- Jakubowicz, A. & Ho, C. (eds.) 2013, *For Those Who've Come Across the Seas*, Anthem Press, Sydney. <https://doi.org/10.1080/00049182.2014.899032>
- Jupp, J., Nieuwenhuysen, J. & Dawson, E. (eds.) 2007, *Social Cohesion in Australia*, Cambridge University Press, Cambridge. <https://doi.org/10.1017/cbo9780511481574>
- Jupp, J. & Clyne, M. (eds.) 2011, *Multiculturalism and Integration – A Harmonious Relationship*, ANU Press, Canberra. https://doi.org/10.26530/oopen_459378
- Keany, F. & Norman, J. 2015, 'Operation Fortitude: Immigration, Australian Border Force apologise for media release that triggered Melbourne protests', *ABC News* (online), 19 October, viewed 5 March 2018
<http://www.abc.net.au/news/2015-10-19/immigration-border-force-chiefs-apologise-operation-fortitude/6864982>
- Kelly, P. 2009, *The March of Patriots: The Struggle for Modern Australia*, Melbourne University Press.
- King, M. L. (Jr), Speech at the Western Michigan University on 18 December 1963
<http://wmich.edu/sites/default/files/attachments/MLK.pdf>
- Kinowska, Z. & Lim, L. 2017, 'The Challenges of Building a Diverse Society: Australian Inspirations', *Studia Polityczne*, vol. 45, no. 3: pp. 201-223.
- Kirby, M. 2015, Speech delivered at the launch of the Sydney branch of the Asian Australian Lawyers Association on 2 Nov 2015.
<https://www.youtube.com/watch?v=Vb2f3u3-VLQ> .
- Kymlicka, W. 2010, *The Current State of Multiculturalism in Canada and Research Themes on Canadian Multiculturalism (2008-2010)*, Canadian Government Paper,
<http://www.cic.gc.ca/english/pdf/pub/multi-state.pdf>
- Nielsen, J. 2008, 'Whiteness and anti-discrimination law – It's in the design', *Australian Critical Race and Whiteness Studies Association*, vol. 24, no. 2: pp. 1-15.

- Ozdowski, S. 2014, 'Racism, Equality and Civil Liberties in a Multicultural Australia', paper delivered at the 5th *International Conference on Human Rights Education, "Advancing Universal Human Rights Culture"*, Washington DC, 4-6 December 2014, viewed on 29 June 2018
https://www.westernsydney.edu.au/_data/assets/pdf_file/0003/983622/2015-08-15_Racism_Equality_and_Civil_Liberties_in_Multicultural_Australia.pdf
https://doi.org/10.1007/978-94-024-0871-3_12
- Paradies, Y., Chandrakumar, L., Webster, K., Burrelle, M., Frere, M., Klocker, N. & McLean, P. 2009, 'Building on our strengths: a framework to reduce race-based discrimination and support diversity in Victoria: Full report', Victorian Health Promotion Foundation, Melbourne.
<http://ro.uow.edu.au/cgi/viewcontent.cgi?article=8017&context=scipapers>
- Raz, J. 1994, 'Multiculturalism: A Liberal Perspective', *Dissent Magazine*, Winter 1994, available at: *malikdolgozat blogs*
http://malikdolgozat.uw.hu/cikk/Raz_Multiculturalism.pdf
<https://doi.org/10.1093/acprof:oso/9780198260691.003.0008>
- Rice, S. 2014, 'Why free speech comes at a price: Reflections on race, civility and the law', Speech delivered at the *Inaugural Research Seminar at Deakin University School of Law*, Melbourne, 31 July 2014
http://www.deakin.edu.au/_data/assets/pdf_file/0007/256570/Deakin-18C_Rice.pdf
- Shorten, W. 2016, *Budget Reply Speech*, videorecording, viewed 5 May 2016,
<https://www.youtube.com/watch?v=Iz3x1LM5Oww>
- Soutphommasane, T. 2015, 'Forty years of the Racial Discrimination Act' *Australian Human Rights Commission Opinion Pieces*
<https://www.humanrights.gov.au/news/opinions/forty-years-racial-discrimination-act>
<https://doi.org/10.1177/1037969x1504000302>
- Soutphommasane, T. 2012, *Don't Go Back To Where You Came From; Australia's Multicultural Genius*, UNSW Press, Coogee, NSW.
- Thornton, M. 2012, 'Proactive or reactive? The Senate Report on Equal Opportunity for Women in the Workplace Amendment Bill 2012 (Cth)', *Australian Journal of Labour Law*, vol. 25, no. 3: pp. 284-291.
- Thornton, M. 1990, *A Liberal Promise: Anti-Discrimination Legislation in Australia*, Oxford University Press, Melbourne. <https://doi.org/10.1177/002218569203400408>
- Towell, N. 2015, 'Australian Public Service spends \$10 billion on consultants', *Canberra Times* (online), 14 December, viewed 1 December 2017
<http://www.canberratimes.com.au/national/public-service/australian-public-service-spends-10b-on-consultants-20151214-gln4lj.html>
- UN Committee on the Elimination of Racial Discrimination, *Concluding Observations: Australia*, CERD/C/AUS/CO/15-17, 27 August 2010.
www2.ohchr.org/english/bodies/cerd/docs/co/CERD-C-AUS-CO-15_17.doc
- Vago, S. 2015, *Law and Society*, 10th Ed., Routledge, New York.
- Vertovec, S. 2007, *New Complexities of Cohesion in Britain: Super-diversity, Transnationalism and Civil-Integration*, Commission on Integration and Cohesion.

https://www.compas.ox.ac.uk/media/ER-2007-Complexities_Cohesion_Britain_CIC.pdf

Weber, L. 2015, 'Operation Fortitude: it's not just clumsy wording that should worry us', *The Conversation* (online) 30 August, viewed 30 Jun 2018

<http://theconversation.com/operation-fortitude-its-not-just-clumsy-wording-that-should-worry-us-46870>

World Health Organization (WHO) 2015, *Tobacco facts*, viewed 26 Feb 2018

<http://www.who.int/mediacentre/factsheets/fs339/en/>

Williams, G. 2007, 'The races power and the 1967 referendum', *Australian Indigenous Law Review - Special Edition*, vol. 11, pp. 8-11.

<http://www.austlii.edu.au/au/journals/AUIndigLawRw/2007/95.pdf>